IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 5449 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

BHAVESHKUMAR MANHARLAL PANCHAL

Versus

STATE OF GUJARAT

Appearance:

Ms. Sushma Shah for late MR SUNIL K SHAH for Petitioners

Mr K G Sheth, APP for Respondent No. 1

MR PR NANAVATI for Respondent No. 2

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 17/10/2000

ORAL JUDGEMENT

This is a petition under Section 482 of the Criminal Procedure Code, 1973 (for short 'the Code') for

quashing and setting aside the FIR filed in Halol Police Station at CR No.168/99 by respondent no.2 for offence punishable under section 506 and 504 read with section 114 of IPC against the present petitioner stating that it is a matter of abuse of process of law and, therefore, the FIR may be quashed.

2. I have heard the learned Advocates for the parties and have perused the papers. It appears that the present petitioner no.1 is the husband of the contesting respondent who is the informant before the aforesaid police station. Second petitioner is the father of the first petitioner and the third petitioner is the mother of the first petitioner. So the parties are closely related and there is no dispute about the same. The FIR shows that the offence took place on 24.7.1999. The FIR again shows that on the aforesaid date, the petitioners had given abuses and threats and, therefore, the FIR has been filed.

3. The learned Advocate for the petitioner has argued that the aforesaid allegations are false. The first argument is that the offence took place on 24.7.1999 and the FIR was filed on 26.7.1999. There is no dispute that the FIR has been filed two days after the incident. These are the matters of appreciation of evidence as to whether or not the contents of the Fir to be treated to be true or not. This can be appreciated in light of the evidence led by the prosecution before the court after the charge sheet is filed. This is not the stage at which the Court can appreciate the evidence on record. Simply because the FIR has been filed late by two days, it cannot be said to be basically a false FIR. It is further contended by the learned Advocate for the petitioner that as per the FIR of the family members of the family had gone to Pavagadh on 22.7.1999 and as per the FIR they were on way back and at that time the first petitioner had given threats to the second respondent and had brought pressure on her that she should withdraw the cases and she should divorce the petitioner. It is further contended that even reference of one Arvindbhai has been made in the petition. Learned Advocate for the petitioner states that the second respondent has previously been divorced by her former husband and Arvindbhai was the father of the former husband of the second respondent. Even whether Arvindbhai was present at the time of the incident or not is a question of fact which will be dealt with if and when the evidence is required to be appreciated. The petitioner will be at liberty to show that Arvindbhai was not present at the relevant point of time. At one stage it is stated that

the incident is said to have taken place on 22.7.1999 and at the top of the FIR it is said to have taken place on 24.7.1999. Again this will be a matter of appreciation of contradiction which will have to be brought on record if and when the trial of the case takes place. It cannot be said that no offence is made out on bare reading of the FIR as it stands.

3. It is a matter of record that the contesting respondent has filed HMP No.113/99 against the first petitioner for restitution of conjugal rights. The said HMP is pending before the court concerned. The respondent No.2 filed criminal case no.464 of 1999 against the petitioner for offence punishable under section 498-A read with section 114 of IPC before the learned Metropolitan Magistrate Court, Ahmedabad in March, 1999. That matter is also pending. It appears that there may be some reconciliation in between and therefore, the parties must have gone together to Pavagadh. It cannot be said from the bare reading of the FIR that no offence is made out. In that view of the matter, the FIR cannot be quashed simply because there is some delay in filing the same. In my opinion, there is no reason to quash the FIR.

4. In the result, this petition is dismissed. Rule is discharged. Interim relief is vacated.

17.10.2000 [D P Buch, J.]
msp.